

**ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010**  
**COMMITTEE STATEMENT (CORRECTED)**  
**LB667**

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**Hearing Date:** Tuesday March 10, 2009  
**Committee On:** Agriculture  
**Introducer:** Sullivan  
**One Liner:** Change provisions relating to division fences

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

**Aye:** 8 Senators Carlson, Dierks, Dubas, Karpisek, Price, Schilz, Wallman,  
Council  
**Nay:**  
**Absent:**  
**Present Not Voting:**

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**Proponents:**

Senator Kate Sullivan  
Brad Choquette  
Jim Pappas

**Representing:**

Introducer  
Nebraska Cattlemen  
Independent Cattlemen of Nebraska

**Opponents:**

**Representing:**

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

LB 667 would insert the following clarifications into 34-102 of the Law of Division fences which currently assigns a 'just proportion' allocation of responsibility of adjacent landowners for the construction and maintenance of division fences. Current law only specifically provides that a just proportion allocation is equal shares if adjoining landowners each utilize a division fence to confine livestock, but does not define just proportion allocation in other situations. 34-102 currently also limits applicability of the duties assigned by 34-102 to adjoining landowners if either of the adjoining properties is utilized for agricultural or horticultural use and lies within an agriculturally zoned area as defined, or, in all other areas of the state, only when both properties are utilized for agricultural or horticultural use. The clarification made by LB 667 as introduced include the following:

- Declares a rebuttable presumption that the just proportion allocation is equal shares in all cases while retaining a prescribed allocation of equal share where the division fence is utilized by both parties to confine livestock.
  - Inserts legislative findings of historical and contemporary societal benefits accruing from the compelled duty for construction and maintenance of division fences.
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**Explanation of amendments:**

The Committee Amendment (AM1575) strikes the original provisions and becomes the bill. The committee amendment makes the following substantive changes:

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-- Sets out the legislative findings, inserted as a new subsection (4) of 34-102 by the bill as introduced, as a distinct new statutory section with a minor wording change.

-- Substitutes a definition of 'just proportion' applying to all situations to mean an equitable allocation of the portion of the fenceline to be physically constructed and maintained by each landowner, or in lieu thereof, a financial contribution made by either landowner. An equitable allocation is further clarified to mean an allocation that results in an equal sharing of fence burden unless by private agreement the parties agree to other allocation of fencing responsibilities or in cases where a separate statutory allocation applies.

-- Deletes the existing geographical designation relating to zoning designation where the duties assigned by the fencelaw apply.

-- Inserts clarification in subsection (2) of 34-102 that the fencing standard to which landowners are held unless they agree otherwise is a wire fence as defined in subsection (5) of 34-115. Currently, 34-102 states that the landowners are held liable for a 'lawful fence' as defined by 34-115 which includes a variety of fencing standards that have largely fallen into disuse. The wire fence as defined by subsection (5) of 34-115 is consistent with widely held understanding and practiced fence standards.

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Tom Carlson, Chairperson